



General Assembly

Substitute Bill No. 5554

February Session, 2012

* ____HB05554JUD__040212____ *

AN ACT CONCERNING HABEAS CORPUS REFORM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-470 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012, and*
3 *applicable to petitions filed on or after said date*):

4 (a) The court or judge hearing any habeas corpus shall proceed in a
5 summary way to determine the facts and issues of the case, by hearing
6 the testimony and arguments [therein] in the case, and shall inquire
7 fully into the cause of imprisonment [, and shall] and thereupon
8 dispose of the case as law and justice require.

9 (b) (1) After the close of all pleadings in a habeas corpus proceeding,
10 the court, upon the motion of any party or, on its own motion upon
11 notice to the parties, shall determine whether there is good cause for
12 trial for all or part of the petition.

13 (2) With respect to the determination of such good cause, each party
14 may submit exhibits including, but not limited to, documentary
15 evidence, affidavits and unsworn statements. Upon the motion of any
16 party and a finding by the court that such party would be prejudiced
17 by the disclosure of the exhibits at that stage of the proceedings, the
18 court may consider some or all of the petitioner's exhibits in camera.

19 (3) In order to establish such good cause, the petition and exhibits
20 must (A) allege the existence of specific facts which, if proven, would
21 entitle the petitioner to relief under applicable law, and (B) provide a
22 factual basis upon which the court can conclude that evidence in
23 support of the alleged facts exists and will be presented at trial,
24 provided the court makes no finding that such evidence is
25 contradicted by judicially noticeable facts. If the petition and exhibits
26 do not establish such good cause, the court shall hold a preliminary
27 hearing to determine whether such good cause exists. If, after
28 considering any evidence or argument by the parties at such
29 preliminary hearing, the court finds there is not good cause for trial,
30 the court shall dismiss all or part of the petition, as applicable.

31 (c) Except as provided in subsection (d) of this section, there shall be
32 a rebuttable presumption that the filing of a petition challenging a
33 judgment of conviction has been delayed without good cause if such
34 petition is filed after the later of the following: (1) Five years from the
35 date on which the judgment of conviction is deemed to be a final
36 judgment due to the conclusion of appellate review or the expiration of
37 the time for seeking such review; (2) October 1, 2017; or (3) two years
38 from the date on which the constitutional or statutory right asserted in
39 the petition was initially recognized and made retroactive pursuant to
40 a decision of the Supreme Court or Appellate Court of this state or the
41 Supreme Court of the United States or by the enactment of any public
42 or special act. The time periods set forth in this section shall not be
43 tolled during the pendency of any other petition challenging the same
44 conviction.

45 (d) In the case of a petition filed subsequent to a judgment on a prior
46 petition challenging the same conviction, there shall be a rebuttable
47 presumption that the filing of the subsequent petition was delayed
48 without good cause if such petition is filed more than two years after
49 the later of the following: (1) The date on which the judgment in the
50 prior petition is deemed to be a final judgment due to the conclusion of
51 appellate review or the expiration of the time for seeking such review;
52 (2) October 1, 2012; or (3) the date on which the constitutional or

53 statutory right asserted in the petition was initially recognized and
54 made retroactive pursuant to a decision of the Supreme Court or
55 Appellate Court of this state or the Supreme Court of the United States
56 or by the enactment of any public or special act. For the purposes of
57 this section, the withdrawal of a prior petition challenging the same
58 conviction shall not constitute a judgment. The time periods set forth
59 in this section shall not be tolled during the pendency of any other
60 petition challenging the same conviction. Nothing in this section shall
61 create or enlarge the right of the petitioner to file a subsequent petition
62 under applicable law.

63 (e) In a case in which the rebuttable presumption of delay under
64 subsection (c) or (d) of this section applies, the court, upon the request
65 of the respondent, shall issue an order to show cause why the petition
66 should be permitted to proceed. The petitioner or, if applicable, the
67 petitioner's counsel, shall have a meaningful opportunity to investigate
68 the basis for the delay and respond to the order. If, after such
69 opportunity, the court finds that the petitioner has not demonstrated
70 good cause for the delay, the court shall dismiss the petition. For the
71 purposes of this subsection, good cause includes, but is not limited to,
72 the discovery of new evidence which materially affects the merits of
73 the case and which could not have been discovered by the exercise of
74 due diligence in time to meet the requirements of subsection (c) or (d)
75 of this section.

76 (f) Subsections (b) to (e), inclusive, of this section shall not apply to
77 (1) a claim asserting actual innocence, (2) a petition filed to challenge
78 the conditions of confinement, or (3) a petition filed to challenge a
79 conviction for a capital felony for which a sentence of death is imposed
80 under section 53a-46a.

81 [(b)] (g) No appeal from the judgment rendered in a habeas corpus
82 proceeding brought by or on behalf of a person who has been
83 convicted of a crime in order to obtain such person's release may be
84 taken unless the appellant, within ten days after the case is decided,
85 petitions the judge before whom the case was tried or, if such judge is

86 unavailable, a judge of the Superior Court designated by the Chief
87 Court Administrator, to certify that a question is involved in the
88 decision which ought to be reviewed by the court having jurisdiction
89 and the judge so certifies.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012, and applicable to petitions filed on or after said date</i>	52-470

JUD *Joint Favorable Subst.*